HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1078 OF 2006

Between:

M.A. Waheed

..... Appellant

AND

The Joint Collector,
Nizamabad District & others

.....Respondents

:: J U D G M E N T::

Counsel for the appellant : Shri B. Vijaysen Reddy

Dated: 23.10.2006

Per G.S.SINGHVI, CJ

Feeling aggrieved by order dated 18-11-2005 passed by the learned Single Judge in WPMP No.30998 of 2005 in Writ Petition No.13083 of 2005, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

In the writ petition filed by him, the appellant has questioned the legality of notice dated 21-7-2004 issued by Mandal Revenue Officer, Bodhan, Nizamabad District (respondent No.3) for auction of different parcels of land for grant of annual lease for the year 2004-05. In his affidavit, the appellant has averred that he is in possession of land measuring Ac.1-39 gts. comprised in Survey No. 711 and land measuring Ac.2-18 gts. comprised in Survey Nos. 73, 74 and 75 of Pandutharpa Village, Bodhan Mandal. He has then averred that on the basis of an ex parte enquiry conducted by respondent No.3, a decision has been taken to auction the land by treating the same to be government land. According to the appellant, such a decision could not have been taken without giving him notice and opportunity of hearing.

Along with the writ petition, the appellant filed WPMP No.1730 of 2004 for stay of all further proceedings pursuant to auction notice dated 21-7-2004 issued by the Mandal Revenue Officer. After some time, he filed WPMP. No.30998 of 2005 with the prayer that the respondents may be restrained from harvesting the paddy crop in Survey Nos. 73 to 75 and 711 situated at Pandutharpa Village, Bodhan Mandal, Nizamabad District. It,

however, appears that at the hearing of the second miscellaneous petition, learned counsel for the appellant made a prayer that his client may be allowed to harvest the crop. The learned Single Judge accepted his prayer and permitted the petitioner (appellant herein) to harvest the standing crop subject to the condition that this would not entitle the petitioner to continue to retain possession of the property after harvesting the existing crop.

Shri B.Vijaysen Reddy assailed the condition incorporated in the order of the learned Single Judge by arguing that the same would adversely affect adjudication of the writ petition. Learned counsel submitted that the impugned condition is liable to be set aside because the same goes beyond the scope of the prayer made in the miscellaneous petition.

We have considered the argument of the learned counsel, but have not felt impressed. Rather, we are convinced that the conditional order passed by the learned Single Judge is most fair, equitable and justified and does not call for interference. The learned Single Judge has tried to strike balance between the parties inasmuch as he has allowed the petitioner to harvest the crop, but at the same time, made clear that this will not entitle him to retain possession of the land. If the argument of the learned counsel that the impugned condition is beyond the scope of the prayer made in the miscellaneous petition is accepted, then the whole of the order is liable to be set aside because on his part, the appellant did not make a specific prayer for being permitted to harvest the crop standing on the land. However, we do not propose to set aside the impugned order as a whole and remit the

case for fresh adjudication of WPMP.No.30998 of 2005 because, as mentioned above, the direction given by the learned Single Judge is most equitable and fair.

With the above observations, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1952 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

23.10.2006
svs